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**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MONTANA**

FRIENDS OF THE WILD SWAN, et al.,)	CASE NO. 9:13-cv-00061-DWM
)	
Plaintiffs,)	STIPULATION AND [PROPOSED]
)	ORDER ON PLAINTIFFS' MOTION FOR
v.)	FEES AND COSTS
)	
S.M.R. JEWELL, et al.,)	
)	
Defendants,)	
)	
and)	
)	
MONTANA DEPARTMENT OF)	
NATURAL RESOURCE AND)	
CONSERVATION, et al.,)	
)	
Defendant-Intervenors.)	
)	
)	
)	

1 This stipulation is entered into by and between Plaintiffs Friends of the Wild Swan,
2 Montana Environmental Information Center, and Natural Resources Defense Council and
3 Federal Defendants S.M.R. Jewell and the United States Fish and Wildlife Service. Plaintiffs
4 and Federal Defendants hereby agree and stipulate as follows:
5

6 WHEREAS, Plaintiffs' lawsuit challenged Federal Defendants' issuance of Incidental
7 Take Permits to Defendant-Intervenors under Section 10 of the Endangered Species Act, see 16
8 U.S.C. § 1539(a)(2)(B);

9 WHEREAS, The Court granted Plaintiffs' cross-motion for summary judgment in part
10 and denied the motion in part;

11 WHEREAS, Plaintiffs filed a Motion for Attorneys' Fees on November 6, 2015, see ECF
12 No. 80;

13 WHEREAS, The parties have reached a settlement agreement that obviates the need for
14 further litigation of Plaintiffs' motion for fees and costs;
15

16 NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS
17 FOLLOWS:
18

19 1. Plaintiffs are entitled to an award of costs and attorneys' fees under the
20 Endangered Species Act, 16 U.S.C. § 1540(g). Federal Defendants shall pay Plaintiffs a total of
21 \$87,000 for attorneys' fees, costs, and other litigation expenses for this lawsuit.
22

23 2. Federal Defendants shall make the payment required by Paragraph 1 and the
24 agreed order below by electronic funds transfer to:

25 Earthjustice Attorney Client Trust Account
26 Mechanics Bank
27 Routing #: 121102036
28 Account #: 40891380

1 3. Plaintiffs agree to furnish Federal Defendants with the information necessary to
2 effectuate the payment required by Paragraph 1 of this stipulation and the agreed order below.
3 Federal Defendants agree to submit all necessary paperwork for the processing of the attorneys'
4 fees award to the Department of the Treasury's Judgment Fund Office within ten business days
5 of entry of the Order below by the court or the receipt of the information described in this
6 Paragraph, whichever is later.

8 4. Plaintiffs agree to accept Federal Defendants' payment of \$87,000 in full
9 satisfaction of any and all claims for attorneys' fees and costs of litigation incurred in this matter
10 to date. Plaintiffs agree that receipt of this payment from Federal Defendants shall operate as a
11 release of Plaintiffs' claims for attorneys' fees and costs in this matter to date.

13 5. Plaintiffs reserve the right to seek additional fees and costs incurred subsequent to
14 this Stipulation arising in any future litigation or continuation of the present action. Federal
15 Defendants reserve the right to contest fees claimed by Plaintiffs or Plaintiffs' counsel, including
16 hourly rates and the number of hours billed, in any future litigation or continuation of the present
17 action. Further, this Stipulation as to attorneys' fees and costs has no precedential value and
18 shall not be used as evidence in any other attorneys' fees litigation.

20 6. Nothing in this Stipulation shall be interpreted as, or shall constitute, a
21 requirement that Federal Defendants are obligated to pay any funds exceeding those available, or
22 take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other
23 appropriations law.

25 7. This Stipulation shall be binding on the parties and their successors, agents,
26 designees, employees, and all those acting by and through their authority.
27
28

8. The parties agree that this Stipulation was negotiated in good faith and that this Stipulation constitutes a resolution of claims that were denied and disputed by the parties.

9. The undersigned representatives of each party certify that they are fully authorized by the parties they represent to agree to the terms and conditions of this Stipulation and do hereby agree to the terms herein. None of the provisions or obligations of this Stipulation shall become binding and effective unless and until the Court enters the Order below approving the terms of this Stipulation. The effective date of the agreements set forth in this Stipulation shall be the date the Court enters the Order below.

10. The parties hereby jointly and respectfully request that the Court review and approve the terms of this stipulation, and retain jurisdiction to enforce its terms. See Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375 (1994).

Respectfully submitted this January 14, 2016.

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/s/ Travis J. Annatoyn
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Attorneys for Federal Defendants

Attorney for Plaintiffs

The above STIPULATION is hereby APPROVED and GRANTED

THE HONORABLE DONALD W. MOLLOY
United States District Court Judge